

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-219745

**DATE:** September 24, 1985

**MATTER OF:** Aero Engineering Corporation

**DIGEST:**

Where a small business concern is determined to be nonresponsible by a contracting officer, GAO generally will not review that determination or the subsequent denial of a certificate of competency by the Small Business Administration absent a showing of possible fraud or bad faith on the part of the contracting officials or of SBA's failure to consider vital information bearing on the bidder's responsibility.

Aero Engineering Corporation (Aero) protests the award of a contract to any other bidder, under invitation for bids No. N00140-85-R-0921 issued by the Department of the Navy. We dismiss the protest.

Here, the contracting officer determined that Aero was not a responsible prospective contractor; subsequently, the Small Business Administration (SBA) declined to issue the corporation a certificate of competency (COC). Aero complains that the preaward survey team did not "indicate noncompliance" to Aero, that it has no information as to why the COC was not issued, and that the contracting officer made the nonresponsibility decision without giving Aero an opportunity to discuss or correct the findings of the preaward survey team.

Although a contracting officer may discuss preaward survey information with a prospective contractor before determining its responsibility, see Federal Acquisition Regulation, 48 C.F.R. § 9.105-3(b) (1984), we are aware of no requirement that he do so, and the protester has cited none. Moreover, the SBA has statutory authority to review a contracting officer's determination of nonresponsibility and then to determine conclusively the responsibility of small business concerns by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7) (1982). For this reason, we

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will not independently review a contracting officer's nonresponsibility determination relating to a small business bidder, since such a review would be tantamount to a substitution of our judgment for that of the SBA. Apollo Bedding, Inc., B-218502.2, May 17, 1985, 85-1 C.P.D. ¶ 570. Our Office generally limits its review of the denial of a COC to cases in which the protester shows either possible fraud or bad faith on the part of the contracting officer or where the SBA failed to consider vital information bearing on the bidder's responsibility. RCC Corporation, B-218086, Apr. 3, 1985, 85-1 C.P.D. ¶ 386. While Aero complains that it has received no information concerning why it was not issued a COC, it has not alleged, much less shown, the existence of either of the circumstances under which we would review the determination that it is not responsible. Consolidated Marketing Network, Inc., B-218104, Feb. 12, 1985, 85-1 C.P.D. ¶ 190.

The protest is dismissed.



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